

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION**

VIVIAN BERT, et al.,	)	CASE NO. C-1-02-467
)	
Plaintiffs,	)	Judge Beckwith
	)	Magistrate Judge Hogan
)	
	)	PLAINTIFFS' MOTION FOR
	)	LEAVE TO FILE A SUPPLEMENTAL
	)	RESPONSE TO DEFENDANT'S
AK STEEL CORPORATION,	)	MOTION FOR SUMMARY
	)	JUDGMENT ON THE CLAIMS
Defendant.	)	OF THE ASHLAND PLAINTIFFS
	)	<u>AND ASHLAND CLASS</u>

Plaintiffs, through undersigned counsel, hereby submit this Motion for Leave to File a Supplemental Response to Defendant's Motion for Summary Judgment on the Claims of the Ashland Plaintiffs and Ashland Class. Plaintiffs submit this Supplemental Response to address several misstatements of law and fact in the defendant's Reply (Dkt. #173), particularly the defendant's contention that Dr. Edwin Bradley's March 5, 2008, declaration is untimely and that the failure to produce E.E.O.C. notices of right to sue result in a failure to exhaust administrative remedies.

The attached Supplemental Response will demonstrate that the defendant's failure to produce requested documents resulted in the delayed productions of Dr. Bradley's March 5, 2008, declaration. Plaintiffs' Supplemental Response will highlight the specific document requests – tendered over five years ago – that sought test results for applicants of employment at AK Steel's Ashland facility. Plaintiffs will also set forth caselaw that describes the types of sanctions available to remedy the defendant's repeated failure to produce the requested documents, and the rationale for

excusing plaintiffs' supposedly "untimely" production of Dr. Bradley's March 5th Declaration.

In addition, the Supplemental Response responds to the defendant's argument, raised for the first time in its Reply, that plaintiffs' claims should be dismissed because they filed suit before receiving their EEOC notices of rights-to-sue. Plaintiffs set forth Sixth Circuit precedent holding that Title VII claims should not be dismissed when complaints are filed before notices are issued by the EEOC.

CONCLUSION

WHEREFORE, PREMISES CONSIDERED, plaintiffs respectfully request that the Court GRANT their Motion for Leave to File a Supplemental Response to Defendant's Motion for Summary Judgment on the Claims of the Ashland Plaintiffs and Ashland Class.

Respectfully Submitted,

/s/ Herman N. Johnson, Jr.

Robert F. Childs, Jr. (ASB-2223-C-60R)

Herman N. Johnson, Jr. (ASB-3607-R50J)

WIGGINS, CHILDS, QUINN & PANTAZIS

The Kress Building

301 19th Street North

Birmingham, Alabama 35203

(205) 328-0640

(205) 254-1500 (facsimile)

Tobias, Kraus & Torchia, LLP

414 Walnut Street

Suite 911

Cincinnati, Ohio 45202

(513) 241-8137

(513) 241-7863 (facsimile)

ATTORNEYS FOR THE PLAINTIFFS

CERTIFICATE OF SERVICE

I do hereby certify that on March 27, 2008, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system which will send notification of such filing to the following:

Gregory Parker Rogers
Lawrence James Barty
Patricia Anderson Pryor
Taft, Stettinius & Hollister, LLP
1800 First Star Tower
425 Walnut Street
Cincinnati, OH 45202
Fax: (513) 381-0205

/s/ Herman N. Johnson, Jr.

PLAINTIFFS' COUNSEL